

**IN THE UNITED STATES DISTRICT COURT
EIGHTH CIRCUIT
UNITED STATES OF AMERICA**

GARY BIRD (deceased), by and through)
His Next Friend, Greg Bird,)
) Cause No.
Plaintiff,)
) Division No.
vs.)
) Jury Trial Demanded
JEFFERSON COUNTY SHERIFF'S)
DEPARTMENT)
Serve: Oliver Glenn Boyer)
Sheriff)
510 First Street)
Hillsboro, MO 63050)
)
and)
)
SHERIFF OLIVER GLENN BOYER, Individually,)
Serve at: Place of Employment)
Jefferson County Sheriff's)
Department)
510 First Street)
Hillsboro, MO 63050)
)
and)
)
DEPUTY DREW CREWS, DSN: 15, Individually,)
Serve at: Place of Employment)
Jefferson County Sheriff's)
Department)
510 First Street)
Hillsboro, MO 63050)
)
and)
)
DEPUTY TIM GROAT, DSN: 132, Individually)
Serve at : Place of Employment)
Jefferson County Sheriff's)
Department)
510 North First Street)
Hillsboro, MO 63050)

and)

LIEUTENANT TERRY THOMAS, DSN: 772,)
Individually)

Serve at: Place of Employment)
Pevely Police Department)
301 Main Street)
Pevely, MO 63070)

and)

DEPUTY JEFF SENGHEISER, DSN: 168,)
Individually)

Serve at: Place of Employment)
Jefferson County Sheriff's)
Department)
510 First Street)
Hillsboro, MO 63050)

PETITION FOR WRONGFUL DEATH

COMES now the Plaintiff, Gary Bird (deceased), by and through his Next Friend, Greg Bird, by and through their undersigned counsel of record, and for their cause of action against the above named Defendants state and allege as follows:

1. This action is instituted and prosecuted under and by virtue of section 537.080 et. seq. R.S.Mo. (1979) commonly known as the Wrongful Death Statute.

2. The Plaintiff, Greg Bird, is the surviving natural parent of Gary Bird who at all times relevant to this action, was a resident of Jefferson County, State of Missouri respectively.

3. That venue is proper pursuant to section 42 U.S.C. §1983 and 1988, 28 U.S.C. §1343(4), 2201 and 2202, V.A.M.S. 508.010 and The Constitution of the United States,

Amendments XIV, VIII and IX, the Plaintiff described herein are the proper parties to bring this action for the wrongful death of Gary Bird, deceased.

4. That Defendants, Deputy Drew Crews, Deputy Tim Groat, Lieutenant Terry Thomas, Deputy Jeff Sengheiser, and Sheriff Oliver Glenn Boyer, are sued in their official capacity as individuals comprising the Jefferson County Police Department and are sued as a result of the wrongful shooting identified herein.

5. That the Defendant, Jefferson County Sheriff's Department, is sued as a result of the wrongful shooting as identified herein and Defendant, Oliver Glenn Boyer, is sued as an individual.

6. That Defendants, Deputy Drew Crews, Deputy Tim Groat, Lieutenant Terry Thomas, Deputy Jeff Sengheiser, and Oliver Glenn Boyer, as members of the Jefferson County Sheriff's Department, are officers of the Jefferson County Sheriff's Department and that Defendant, Jefferson County Sheriff's Department, pays Deputy Drew Crews, Deputy Tim Groat, Lieutenant Terry Thomas, Deputy Jeff Sengheiser, and Oliver Glenn Boyer a salary for the services and benefits that they confer upon the Defendant, while working as officers within its jurisdiction.

7. That at all times relevant herein Highway MM and Woodrow Hill were public thoroughfares in the County of Jefferson, Missouri with Highway MM running in a generally westerly and easterly direction, and Woodrow Hill running in a generally northerly and southerly direction.

8. The Defendants, Deputy Drew Crews, Deputy Tim Groat, Lieutenant Terry Thomas and Deputy Jeff Sengheiser, who at all times relevant herein, was an agent, servant, and employee of Defendant, Jefferson County Sheriff's Department, and was

acting within the scope and course of that employment as a police officer and were the drivers of a Jefferson County Sheriff's Department district cruiser, owned by the Jefferson County Sheriff's Department, on the day of the accident herein after described in a non emergency situation and was pursuing Gary Bird on Highway MM in a westwardly direction.

9. That on or about March 19, 2005, at or about 10:57 p.m., decedent, Gary Bird, was operating his 1991 BMW, vehicle identification number WBAAF9318MEE68630, was traveling on a public highway in a westerly direction on Highway MM near Woodrow Hill.

10. At the same time and place Defendants, Deputy Tim Groat and Deputy Drew Crews were operating a police cruisers, owned by the Defendant Jefferson County Sheriffs' Department and traveling in pursuit of Gary Bird, deceased, on a public highway in a westerly direction near Woodrow Hill.

11. Defendants forced decedent off the road and opened fire upon decedent shooting nine (9) times, striking decedent Gary Bird's person four (4) times killing him instantaneously.

12. That the Plaintiffs described herein are the proper parties to bring this action for the wrongful death of Gary Bird, deceased.

13. That the death of the decedent, Gary Bird, was directly and proximately caused by the negligence and carelessness of the Defendants, and Defendant's agency, servants, and employees in that Deputy Tim Groat, Deputy Drew Crews and Lieutenant Terry Thomas negligently used deadly force to apprehend decedent, Gary Bird for a minor traffic violation of expired license plates.

14. The defendants named herein violated the Missouri Statutes "Which prohibits law enforcement officers to use deadly force to effect the arrest against a person who may have committed a misdemeanor or lesser offense; deadly force is only permitted to effect the arrest of a person who had committed a felony if the person has been notified that he or she is under arrest and if the force used is restricted to that reasonably necessary to effect the arrest";
15. Defendants negligently and carelessly deprived decedent, Gary Bird of his equal protection of laws in violation with the XIV Amendment of the Constitution of the United States.
16. Defendants negligently and carelessly inflicted cruel and unusual punishment upon decedent, Gary Bird in violation with the XIV, XI and IIV Amendments of the Constitution of the United States of America
17. Defendants negligently and carelessly violated police department procedures.
18. That as a direct and proximate result of the aforesaid negligence and carelessness of the Defendants and Defendants' agents, servants, and employees, decedent, Gary Bird was caused to suffer severe, painful and fatal injuries, that his ability to work labor and enjoy life was permanently destroyed.
19. That as a result of Defendants' actions and negligence Plaintiff has been caused to lose the love, care, society, companionship, comfort, guidance, services, and support of Gary Bird, deceased, all to his injury and damage.
20. That as a direct and proximate result of the aforesaid injuries to Gary Bird, deceased, Plaintiff has become obligated for necessary funeral and burial expenses in the amount of eight thousand dollars (\$8,000.00) respectively.

21. That Plaintiff prays for prejudgment interest pursuant to section 408.040 RSMo.

Wherefore Plaintiff prays for judgment against Defendants and each of them in a sum in excess of seventy five thousand dollars (\$75,000.00) and for such further fair and equitable relief that this court deems just and proper together with prejudgment interest.

Count II
Negligence Per Se

COMES now the Plaintiff, Gary Bird (deceased), by and through his Next Friend, Greg Bird, by and through their undersigned counsel of record, and for their cause of action against the above named Defendants state and allege for his Count II as follows:

22. Plaintiff realleges and incorporates as if fully set forth herein the allegations in paragraph 1 through 17 in Count I.

23. Defendants, Jefferson County Sheriffs' Department and its members, have a duty to provide responsible, effective operation of the police department and they have a duty to set the policies of the police department.

24. The aforesaid death of Gary Bird was directly and proximately caused by the negligence and carelessness of the Defendants, Deputy Crews, Deputy Groat, Deputy Sengheiser and Lieutenant Thomas, Defendant Sheriff Glenn Boyer, Defendant Jefferson County Sheriffs' Department, and its members, by pursuing decedent Gary Bird and was negligence per se in that they:

- a. The defendants violated the Missouri Statutes "Which prohibits law enforcement officers to use deadly force to effect the arrest against a person who may have committed a misdemeanor or lesser offense; deadly

force is only permitted to effect the arrest of a person who had committed a felony if the person has been notified that he or she is under arrest and if the force used is restricted to that reasonably necessary to effect the arrest”;

- b. Defendants negligently and carelessly deprived decedent, Gary Bird of his equal protection of laws in violation with the XIV Amendment of the Constitution of the United States;
- c. Defendants negligently and carelessly inflicted cruel and unusual punishment upon decedent, Gary Bird in violation with the XIV, XI and IIIV Amendments of the Constitution of the United States of America; and
- d. Defendants negligently and carelessly violated police department procedures.

25. As a direct result of the aforesaid negligence of the Defendants and Defendants agents, servants, and employees, Gary Bird was caused to die.

26. Plaintiffs prays for pre-judgment interest pursuant to section 408.040 R.S.MO.

Wherefore Plaintiff prays for judgment against Defendants and each of them in a sum in excess of seventy five thousand dollars (\$75,000.00) and for such further and equitable relief that this court deems just and proper together with prejudgment interest.

Respectfully Submitted

By: Celestine Dotson

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Attorney (s) for Petitioner